

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PROTECT OUR PARKS, INC.,) Docket No. 18 CV 3424
et al.,)
)
 Plaintiffs,)
) Chicago, Illinois
 vs.) October 24, 2018
) 9:45 o'clock a.m.
CHICAGO PARK DISTRICT and CITY)
OF CHICAGO,)
)
 Defendants.)

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE JOHN ROBERT BLAKEY

APPEARANCES:

For the Plaintiffs: ROTH FIORETTI LLC
 BY: MR. ROBERT FIORETTI
 MR. MARK D. ROTH
 311 South Wacker Drive
 Suite 2470
 Chicago, Illinois 60606

For Chicago Park
District: BURKE WARREN MacKAY & SERRITELLA PC
 BY: MR. JOSEPH P. RODDY
 330 North Wabash Avenue
 22nd Floor
 Chicago, Illinois 60611

For City of Chicago: CITY OF CHICAGO, DEPARTMENT OF LAW
 BY: MR. ANDREW W. WORSECK
 30 North LaSalle Street
 Suite 1230
 Chicago, Illinois 60602

Laura LaCien, CSR, RMR, CRR
Official Court Reporter
219 South Dearborn Street, Suite 1212
Chicago, Illinois 60604
(312) 408-5032

1 (The following proceedings were had in open court:)

2 COURTROOM DEPUTY: 18 C 3424, Protect Our Parks, et
3 al., versus Chicago Park District.

4 THE COURT: Good morning, counsel. Appearances.

5 MR. ROTH: Good morning, your Honor. My name is
6 Mark Roth, R-o-t-h. I represent the plaintiffs.

7 MR. FIORETTI: Bob Fioretti also on behalf of
8 plaintiff.

9 THE COURT: Good to see you, counsel.

10 MR. WORSECK: Good morning, your Honor. Andrew
11 Worseck for the City.

12 MR. RODDY: Good morning, Judge. Joe Roddy on
13 behalf of Chicago Park District.

14 THE COURT: All right. We have an answer on file
15 with affirmative defenses. Normally what I would do now is
16 set a date for pilot discovery, attorney-driven discovery,
17 expert discovery if you need it, dispositive motion schedule
18 and a trial so -- but I'm not sure how much discovery the
19 parties in this case think they need so why don't you tell me
20 what -- how you see our duties today?

21 MR. WORSECK: Your Honor --

22 MR. ROTH: I'm sorry. May I?

23 THE COURT: Plaintiffs go first, go ahead.

24 MR. ROTH: So yesterday we had sent around our
25 proposed discovery schedule and that would have either MIDP

1 or Rule 26 disclosures by the end of the October, October
2 31st, close of fact discovery by February 28th, 2019,
3 obviously, deadline for serving expert reports -- at least
4 initial reports -- March 29th, a month thereafter, rebuttal
5 reports, April 30th, and then the close of all expert
6 discovery of May 31st of 2019.

7 So I sent that to counsel, did not receive a
8 substantive response other than a response saying they want
9 to discuss it in court today but so that's -- it's, we
10 believe, a fairly tight schedule with fact discovery closing
11 at the end of February and we want to keep it on a short
12 leash. There's certainly some discovery necessary so we had
13 already issued subpoenas to the Obama Foundation and
14 University of Chicago. They responded in part. We agreed
15 that they would produce some things now and then we discussed
16 other things, which we are going to do probably today. We've
17 issued written discovery to the City and the Park District I
18 believe it was Tuesday so there's some discovery we need
19 because the initial ordinance that we sued upon has been --
20 let's just say the landscape, without using a pun, has
21 changed because they're going to presumably enact a new
22 ordinance so we need some discovery but we have proposed a
23 pretty aggressive schedule.

24 THE COURT: All right. What's your thoughts,
25 counsel?

1 MR. WORSECK: Thank you, your Honor. We are happy
2 to talk about case management dates today but I want to make
3 one point and kind of explain why we didn't file a
4 dispositive motion on Monday when we filed our answer and
5 that simply is, as we've said repeatedly both in writing and
6 orally before your Honor, we think that it makes the most
7 sense to tee up a dispositive motion after the ordinance that
8 is currently now pending before the city council that would
9 govern the Foundation's ability to use the site for the OPC.
10 Once that is enacted, which we expect the city council to
11 vote on in seven days on October 31st, once that is enacted,
12 then that would be the appropriate time to file a dispositive
13 motion.

14 At the first hearing in this matter, your Honor
15 asked both parties their views on whether the case would be
16 susceptible to early resolution on a dispositive motion and
17 both parties essentially agreed. The plaintiffs said they
18 thought the case came down to the law and that they didn't
19 anticipate needing any discovery. At that time we were
20 talking about the very ordinance that is now before the city
21 council. This is not some new ordinance coming out of left
22 field. This is the same ordinance we've always been talking
23 about.

24 So if, in fact, the city council enacts that
25 ordinance next Wednesday, we would then shortly thereafter be

1 filing a dispositive motion which we think would present the
2 Court with everything it needs, as we've said before, to
3 resolve the merits of this case based on the law and the
4 governing ordinances.

5 MR. ROTH: And, your Honor, so I remember exactly
6 what I said on July 5th when we were in front of you on the
7 initial status. You asked if we would need discovery. I
8 said we probably need some limited discovery. What we're
9 proposing is limited discovery. So we've already deferred
10 MIDP disclosures because the City and Park District
11 represented they were going to file a motion to dismiss for
12 lack of subject-matter jurisdiction, which is one of the
13 reasons why you could defer MIDP disclosures. They didn't
14 file a motion to dismiss. They filed an answer and they have
15 affirmative defenses on lack of subject-matter jurisdiction.
16 So having said that, they haven't filed a dispositive motion
17 what. We're asking for is limited discovery, the same thing
18 I asked for when we discussed it on July 5th.

19 THE COURT: Okay. Anything else?

20 MR. WORSECK: On the issue of MIDP discovery, your
21 Honor, the parties and the Court have all been aligned
22 previously with deferring that discovery. The plaintiff's
23 schedule that we proposed yesterday afternoon -- that was the
24 first time we saw it -- is a schedule that contemplates kind
25 of conventional discovery, attorney-driven discovery, not the

1 MIDP process so it seems like they are of the mind that MIDP
2 is inappropriate. We continue to be of the mind that MIDP is
3 inappropriate in part because we think we have a strong
4 subject-matter jurisdiction argument which would be a basis
5 under the standing order for deferring the commencement of
6 MIDP and we'd be happy to -- we've laid that out in our
7 affirmative defenses and we'll talk about it more in our
8 dispositive motion.

9 MR. ROTH: Well, so the schedule I proposed to the
10 other side contemplated either MIDP or Rule 26(a)(1)
11 disclosures. I think we need Rule 26(a)(1) disclosures
12 because of Rule 37 and the implications of that rule. So
13 either way, whether it's MIDP on the one hand or Rule
14 26(a)(1) disclosures on the other hand, I think that those
15 are prerequisite here to further attorney-driven discovery
16 and that's what we propose. That's what I proposed in my
17 email yesterday that whatever disclosure we're going to have,
18 whether it be MIDP or Rule 26(a)(1) --

19 THE COURT: Have you read the MIDP?

20 MR. ROTH: I have. It's very comprehensive, your
21 Honor. I'm involved in several cases where we have been
22 involved in that.

23 THE COURT: MIDP, the normal deadline for that is
24 triggered off of the answer date so the MIDP would not be due
25 at the end of October, right?

1 MR. ROTH: Well, it is -- that's correct but
2 we've certainly pushed it off from --

3 THE COURT: Well, it's never been triggered because
4 there's never been an answer --

5 MR. ROTH: You're right, your Honor.

6 THE COURT: -- so the MIDP would never be due when
7 you're suggesting.

8 MR. ROTH: You're right.

9 THE COURT: And the current deadline, if the Court
10 simply applies the standing order regarding MIDP, would put
11 it well past the deadline for the City filing or enacting
12 whatever it wants to enact which would give you an
13 opportunity not only to file a motion to dismiss but a motion
14 to stay discovery before your MIDP was due. Is that fair to
15 say?

16 MR. WORSECK: Yes. That's right.

17 THE COURT: All right. So why don't I just enter an
18 order with the normal MIDP date and a case management
19 conference two weeks after that is due and then you either
20 file or don't file, whatever you want, based on what the city
21 council does or does not do, does that sound fair?

22 MR. ROTH: Yes, your Honor.

23 THE COURT: There's no stay of discovery; let me
24 repeat that.

25 MR. ROTH: Right.

1 THE COURT: So if you want to propound
2 attorney-driven discovery, I'm happy to address whatever
3 issues you may or may not have between now and then but
4 that's the normal course. And when I do the case management
5 conference after the MIDP disclosures, assuming you haven't
6 prevailed on a motion to stay, which you might based on what
7 motion you file in terms of the nature of the motion to
8 dismiss, then it gives the parties an opportunity to look at
9 the MIDP discovery and that clarifies the issue for
10 attorney-driven discovery and we can set a case management
11 conference schedule that has all the dates, including a trial
12 date, including expert discovery schedule, et cetera. Does
13 that sound fair?

14 MR. WORSECK: It makes sense, your Honor.

15 THE COURT: Sound fair?

16 MR. ROTH: Yes.

17 THE COURT: All right. Gloria, give me a MIDP date.
18 The answer was filed I believe yesterday or two days ago.

19 COURTROOM DEPUTY: Wednesday, November 21st.

20 THE COURT: And then give me a CMC a couple weeks
21 after that.

22 MR. FIORETTI: 11-21?

23 THE COURT: MIDP is 11-21, initial; and that goes
24 for both sides.

25 COURTROOM DEPUTY: Wednesday, December 5th at 10:15.

1 THE COURT: Is that good for a CMC?

2 MR. ROTH: That's December 5th?

3 THE COURT: Yes.

4 MR. ROTH: Yes.

5 THE COURT: That will be -- we'll set all the dates
6 including a trial date at that time.

7 MR. ROTH: Yes, your Honor.

8 MR. WORSECK: That works for the City, your Honor.

9 THE COURT: Okay. And if you're talking limited
10 discovery, I was thinking even a shorter schedule than you
11 were talking about. So in the absence of a stay, which we
12 might have, then we would set it on a tighter schedule. I
13 don't know how much discovery you need. So at the case
14 management conference, tell me with specifics how many
15 depositions you think you need, et cetera, because there's no
16 reason to let the case linger. It needs to be resolved
17 either for one -- for the plaintiff or the defendant.
18 There's -- lingering is not going to happen, for sure.

19 MR. ROTH: We agree.

20 THE COURT: I think everybody agrees.

21 MR. WORSECK: Yes.

22 THE COURT: They want to dismiss it today and you
23 want a judgment in your favor today, so.

24 MR. ROTH: Could you do that for us?

25 THE COURT: All right. Take care, counsel. See you

1 then.

2 MR. WORSECK: Thank you, your Honor.

3 MR. FIORETTI: Take care.

4 MR. ROTH: Thank you.

5 (Which concluded the proceedings in the above-entitled
6 matter.)

7 C E R T I F I C A T E

8 I hereby certify that the foregoing is a transcript
9 of proceedings before the Honorable John Robert Blakey on
10 October 24, 2018.

11

12 ***/s/Laura LaCien***

13 _____
14 Laura LaCien
15 Official Court Reporter

October 26, 2018
Date

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